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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

JAN 28 1997

In the Matter of)
)
Policy and Rules Concerning)
The Interstate, Interexchange)
Marketplace)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC Docket No. 96-61

**COMMENTS OF ABC, INC., CBS INC.,
NATIONAL BROADCASTING COMPANY, INC. AND
TURNER BROADCASTING SYSTEM, INC. ON
PETITIONS FOR RECONSIDERATION**

ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (collectively, "the Networks"), by their attorneys and pursuant to Section 1.429(f) of the Commission's rules, hereby submit these comments in response to the petitions for reconsideration filed in response to the Second Report and Order, FCC 96-424, issued October 31, 1996, in the above-captioned proceeding.

I. BACKGROUND

The Commission initiated this proceeding to implement newly enacted Section 10(a) of the Communications Act of 1934, as amended ("the Act"), which requires the Commission to forbear from enforcing any regulation or provision of the Act upon a determination that (1) enforcement of such a regulation or provision is not necessary to ensure that the rates, terms and

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conditions of telecommunications service are just and reasonable, (2) enforcement of such regulation or provision is not necessary for the protection of consumers, and (3) forbearance from applying such regulation is consistent with the public interest.

In comments filed with the Commission, the Networks concluded that the pro-competitive, deregulatory policy underlying new Section 10(a) requires that the Commission prohibit nondominant interexchange carriers from filing tariffs, at least for the services provided to business customers.^{1/} The Networks explained that under a mandatory detariffing policy the legal relationship between carriers and their business customers will be governed by ordinary commercial contract law principles and carriers will be precluded from relying upon the "filed rate doctrine" under which tariff revisions unilaterally filed by the carrier that are allowed to become effective supersede any conflicting provision in an unfiled carrier-customer agreement governing the relevant service.^{2/}

^{1/} Comments of Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc., CC Docket No. 96-61, April 25, 1996, at 4.

^{2/} Id. at 4-5, citing American Broadcasting Companies, Inc. v. FCC, 643 F.2d 818 (D.C. Cir. 1980).

In the Second Report and Order, the Commission adopted rules requiring the complete detariffing of nondominant carrier domestic interexchange services for both business and residential customers. The Commission, however, did not adopt forbearance for nondominant carriers' international service offerings. Moreover, it required nondominant carriers that have "mixed" domestic and international service offerings either to cancel the mixed tariff and refile a new tariff containing only international services or to issue revised pages canceling the material in the tariffs pertaining to domestic services subject to mandatory detariffing. Eleven parties filed petitions for reconsideration or clarification of the Second Report and Order. As discussed below, the Networks oppose certain petitions for reconsideration and support others.

II. THE COMMISSION SHOULD RETAIN ITS MANDATORY DETARIFFING POLICY, AT LEAST FOR BUSINESS SERVICES

Several carriers oppose one or more aspects of the mandatory detariffing policy.^{3/} Frontier Corporation, for example, requests that the Commission substitute a permissive detariffing regime for the mandatory detariffing policy.

^{3/} See, e.g., the petitions for reconsideration filed by AT&T Corporation, Telco Communications Group, Telecommunications Resellers Association, Western Union Communications, Inc.

Frontier claims that the Commission has overstated the benefits associated with mandatory detariffing.

The Commission should deny the carriers' petitions with respect to this issue. The mandatory detariffing policy provides important benefits to business customers that are not available under a permissive forbearance regime. The mandatory detariffing policy establishes the most pro-competitive, deregulatory regime possible. Under mandatory detariffing carriers no longer would be able to claim -- often incorrectly -- that the Commission would not allow a particular negotiated contract provision to be incorporated into a tariff. Mandatory detariffing also allows business customers to negotiate with carriers mutually enforceable contractual commitments that ensure the business customers will receive the benefits of their bargain for the full term of the contract period. Anything less than mandatory detariffing raises the potential the carriers will invoke the filed rate doctrine unilaterally to alter or abrogate their contractual obligations.

Moreover, the carriers' argument that tariffs filed on one-day's notice do not stand as an impediment to rapid responses to customer demands is simply wrong. Large business customers can attest to the delays occasioned when after negotiating a

contract with a carrier they also must negotiate a tariff that attempts to embody what is usually a complex contractual document in a way that satisfies the Commission's tariff rules while attempting to protect the interests of business customers in an environment where the filed rate doctrine applies.

Although mandatory detariffing should be retained for telecommunication services provided to business customers, the Networks do not oppose the petitions for reconsideration that seek a permissive tariffing policy limited to residential subscribers and "casual callers" who do not use a presubscribed carrier.^{4/} As described in their initial comments in this proceeding, the Networks believe that mandatory detariffing reasonably could be limited to the services provided to business customers.

III. THE COMMISSION SHOULD GRANT THE PETITIONS SEEKING TO EXTEND MANDATORY DETARIFFING TO INTERNATIONAL SERVICES BUNDLED WITH DOMESTIC SERVICES IN NEGOTIATED, CUSTOMER-SPECIFIC SERVICE ARRANGEMENTS

American Petroleum Institute ("API") and the SDN Users Association each seek reconsideration of the Commission's ruling requiring the tariffing of international services that are

^{4/} See AT&T Corporation at 9, Western Union Communications at 2, and Telco Communications Group at 2-3.

bundled with domestic services in individually negotiated service arrangements. API explains that the tariffing of international services in bundled offerings of "mixed" services is not necessary to ensure just and reasonable rates because it is the market, not tariffs, which constrains the prices, terms and conditions of any bundled, individually negotiated international services provided by nondominant interexchange carriers.^{5/}

The Networks support the petitions for reconsideration filed by API and the SDN Users Association. The market forces that ensure that the domestic services provided by nondominant carriers are just and reasonable operate with sufficient effectiveness when large business customers include international offerings as a component of their individually negotiated "mixed" service arrangements with nondominant carriers. Moreover, the benefits of mandatory detariffing to business customers apply to international services as well as to domestic services. In both instances, business customers are entitled to the assurance gained under mandatory detariffing that they will receive the benefit of their negotiated bargain and to the quick responses indicative of a competitive marketplace. The Commission's

^{5/} API at 5.

current policy of requiring the parties to a "mixed" customer-specific service arrangement to tariff some aspects of the arrangement but not others causes unnecessary delays and confusion. It also stands as an impediment to reaching Congress' goal under Section 10(a) of the Act of achieving a pro-competitive, de-regulatory marketplace environment.

IV. CONCLUSION

For the foregoing reasons, the Commission should take action consistent with the views expressed herein.

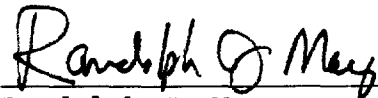
Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Marcia Towne Devens, do hereby certify that true and correct copies of the foregoing document, "COMMENTS OF ABC, INC., CBS INC., NATIONAL BROADCASTING COMPANY, INC. AND TURNER BROADCASTING SYSTEM, INC. ON PETITIONS FOR RECONSIDERATION," were served by hand or by first-class U.S. Mail, postage prepaid, this 28th day of January, 1997, on the following:

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